

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRANDON MCWILLIAMS,

Petitioner,

v.

SCOTT RUSSELL,

Respondent.

CASE NO. C14-5859 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 14), and Petitioner Brandon McWilliams’ (“McWilliams”) objections to the R&R (Dkt. 16).

On May 20, 2015, Judge Christel issued the R&R recommending that the Court dismiss McWilliams’ petition without prejudice for failure to exhaust his administrative remedies. Dkt. 14. Judge Christel concluded that McWilliams had failed to present his federal law claims to the state court because his claims were all based on violations of state law. *Id.* On June 29, 2015, McWilliams filed objections asserting numerous arguments in support of reviewing the merits of his petition. Dkt. 16.

1 The district judge must determine de novo any part of the magistrate judge's
2 disposition that has been properly objected to. The district judge may accept, reject, or
3 modify the recommended disposition; receive further evidence; or return the matter to the
4 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

5 In this case, McWilliams' federal claims are unexhausted. While McWilliams
6 correctly notes that, in some instances, federal law and state law "mirror each other,"
7 there is no precedent for the proposition that such similarities relieve a petitioner from the
8 duty to exhaust his federal claims in state court. McWilliams is required to present his
9 federal claims to the state court before he may properly assert those claims in this federal
10 petition. Dismissal of this petition without prejudice is the proper remedy so that
11 McWilliams retains the opportunity to exhaust his federal claims in state court before
12 seeking relief on those claims in this court. Therefore, the Court having considered the
13 R&R, McWilliams' objections, and the remaining record, does hereby find and order as
14 follows:

- 15 (1) The R&R is **ADOPTED**; and
16 (2) This petition is **DISMISSED without prejudice**.

17 Dated this 18th day of August, 2015.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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